

Below is the Order of the Court.



A handwritten signature in black ink, appearing to read "CM Alston", is written over a horizontal line.

**Christopher M. Alston**  
**U.S. Bankruptcy Judge**

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

SKAGIT GARDENS, INC. *et al.*<sup>1</sup>  
3100 Old Highway 99 South  
Mount Vernon, WA 98273  
80-0161154,

Debtors.

Lead Case No. 16-12879-CMA

ORDER:

(1) AUTHORIZING SKAGIT GARDENS, INC.'S USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION THEREFOR PURSUANT TO SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE, AND  
(2) SETTING A FINAL HEARING

This matter came before the Court on the Motion ("Motion") of Skagit Gardens, Inc. ("Skagit Gardens"), debtor-in-possession herein, pursuant to sections 105, 361, 362, and 363(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 4001-2, and 9013-

<sup>1</sup> The Debtors are Skagit Gardens, Inc., Skagit RESPE LLC, Skagit TPPSPE LLC, and Skagit Real Estate Holdings, LLC.

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ADEQUATE PROTECTION – Page 1

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1(d)(2)(E) Local Rules of Bankruptcy Procedure for the Western District of Washington (the “Local Rules”), for the entry of an Order authorizing, on an interim basis, Skagit Gardens’ use of cash collateral pursuant to a Budget (defined below), authorizing Skagit Gardens to grant, on an interim basis, adequate protection in favor of parties (“Secured Parties”)<sup>2</sup> asserting liens (“Prepetition Liens”) in substantially all of the assets of Skagit Gardens, including but not limited to deposit accounts, accounts, inventory, goods, equipment and general intangibles (“Prepetition Collateral” as to which Skagit Gardens seeks to use “cash collateral” as defined under Bankruptcy Code § 363(a) (“Cash Collateral”)). The Court has reviewed the files and records herein and makes the following findings of fact:

**FINDINGS OF FACT**

A. Skagit Gardens filed its petition for relief under Chapter 11 of the Bankruptcy Code (“Case”) on May 27, 2016 (the “Petition Date”). Skagit Gardens has retained control over its assets and continues to operate its business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. Skagit Gardens sent notice of the hearing on the Motion to Secured Creditors, the U.S. Trustee, the twenty largest unsecured creditors, and state and federal taxing authorities. Such notice is adequate and reasonable under the circumstances pursuant to Bankruptcy Rules 4001 and Local Rule 4001 and 9013-1(d)(2)(E).

C. Skagit Gardens’ business consists of growing and sells two categories of plants, finished plants sold to independent garden centers, retailers, and landscapers throughout North America, and “plugs and liners,” transplants sold to greenhouses and nurseries.

D. As detailed in the Motion, Skagit Gardens requires the use of Cash Collateral to continue its ongoing operations in the ordinary course of business, and in order to avoid disruption of

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<sup>2</sup> Secured Parties for purposes of this Motion are Sterling National Bank as assignee of NewStar Business Credit, LLC as Administrative Agent and Lender (“Sterling”) and Aequitas Commercial Finance, LLC (“Aequitas”).

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1 such operations. The Court finds and concludes that Skagit Gardens and the estate will suffer  
2 immediate and irreparable harm if the relief approved hereby is not granted.

3 E. Skagit Gardens represents that it is unable to obtain financing and, except Cash  
4 Collateral, has no source from which to fund the budgeted expenses necessary to preserve and protect  
5 the assets of the estate.

6 F. Pursuant to §§ 361 and 363 of the Bankruptcy Code, Skagit Gardens has agreed to  
7 provide adequate protection of Secured Parties' interests in the Prepetition Collateral on the terms  
8 provided for herein and the budget attached hereto as Exhibit A (as amended in accordance herewith,  
9 the "Budget").

10 G. With respect o Skagit Gardens' daily collections and flow of funds, customer payments  
11 are typically deposited into a lockbox account maintained by Skagit Gardens at Wells Fargo  
12 ("Lockbox Account"). Prior to the Petition Date, Sterling National Bank ("Sterling") would collect  
13 deposits in the Lockbox Account, apply against the outstanding balance owed to Sterling and  
14 readvance funds to Skagit Gardens pursuant to the line of credit arrangement in place. Sterling's  
15 advances to Skagit Garden are deposited into its general operating/checking account, also maintained  
16 at Wells Fargo ("Wells Checking Account").

17 H. As part of the Budget and Skagit Gardens' request to use Cash Collateral, Skagit  
18 Gardens proposes to create and fund a professional fund ("Professional Fund") on a postpetition basis  
19 in order to pay the Debtors' and the Official Unsecured Creditors Committee's ("Committee")  
20 professional fees and costs as the Court may authorize and allow by subsequent order following notice  
21 and hearing. Skagit Gardens proposes to deposit all funds budgeted for the Professional Fund with  
22 Bush Kornfeld LLP, attorneys for the Debtors, where such funds would be held in trust pending  
23 further order of the court following notice and hearing. Skagit Gardens believes that the proposed  
Professional Fund is appropriate given the size and nature of this Case and the likely creation and  
participation of a Committee in this Case.

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1 I. Based on the record before this Court, including the Budget, the fact that ongoing  
2 operations will continue to maximize the value of the Skagit Gardens' assets and estate, and the  
3 granting of replacement liens to the Secured Parties to secure any diminution in the value of their  
4 interests which may occur as a result of Skagit Gardens' use of Cash Collateral, the Court finds that,  
5 on an interim basis, the interests of the Secured Parties are adequately protected, as contemplated by  
6 §§ 361 and 363 of the Bankruptcy Code.

**ORDER**

7 Based on the foregoing findings, it is hereby

**ORDERED as follows:**

8 1. Motion Granted. Skagit Gardens' Motion is granted on an interim basis pursuant to the  
9 terms and conditions of this order (this "Interim Order").

10 2. Use of Cash Collateral. Subject to the terms and conditions of this Interim Order,  
11 Skagit Gardens is authorized to use Cash Collateral in an amount not to exceed the total amount set  
12 forth in the Budget (the "Maximum Amount") for use through the close of business Seattle time (the  
13 "Expiration Time") on the date set for the Final Hearing (defined below). Skagit Gardens' authority  
14 to use Cash Collateral shall terminate automatically without further order of this Court if a final or  
15 further interim order is not entered on or before the Expiration Time. Any amounts paid by Skagit  
16 Gardens pursuant to this Interim Order and in accordance with the Budget shall be paid free of any  
17 lien of any Secured Party. To the extent that funds are deposited into the Lockbox Account, Skagit  
18 Gardens shall be entitled to use such funds pursuant to the terms of this Interim Order, including any  
19 funds that were in the Lockbox Account at the time of the filing of the Petition. Funds deposited into  
20 the Lockbox Account shall be transferred to Sterling to be held (but not applied to Skagit Gardens'  
21 obligations owed to Sterling) in a segregated account pending Skagit Gardens' delivery of requests for  
22 advances to fund the payment of current obligations consistent with the Budget and this Order  
23

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1 (“Transfer Request”). Transfer Requests may be made to fund weekly or daily amounts. Upon  
2 receipt of a conforming Transfer Request before 9:00 a.m., Pacific Time, on a business day, Sterling  
3 shall, no later than the close of business on the same business day, transfer the requested funds to  
4 Skagit Gardens’ Wells Checking Account.

5 3. Budget. Without Sterling’s prior written consent and subject only to subsections (a)  
6 through (c) of this section, Skagit Gardens is not authorized to make any expenditures except in  
7 accordance with the Budget and this Interim Order and for fees of professionals retained pursuant to  
8 terms set forth in further orders of the Court.

9 a. With prior notice to and/or approval of Sterling National Bank, Skagit Gardens  
10 may reallocate payments from cash collateral among Budget line items. The Budget may be amended  
11 from time to time with the written consent and/or at the request of Sterling and Skagit Gardens and on  
12 notice to any Creditors’ Committee (if and when formed), provided that such amended Budget (i)  
13 shall be in a form and substance acceptable to Sterling, in its reasonable discretion, (ii) Skagit Gardens  
14 shall remain bound by this Interim Order and its obligation hereunder to comply with the Budget (as  
15 amended) and (iii) is filed by Skagit Gardens with the Court promptly. Such amended Budget shall  
16 remain in effect unless a party in interest files and serves an objection on counsel for Skagit Gardens,  
17 the Secured Parties and the Creditors’ Committee (if and when formed) and requests a hearing with  
18 respect thereto, provided, however, that no later order of the Court shall impair any payment  
19 previously made in accordance with such amended Budget.

20 b. With respect to any Fixed Expense (defined below) (i) Skagit Gardens’  
21 payment of any Fixed Expense shall not exceed the corresponding expense line item set forth in the  
22 Budget for such Fixed Expense by more than ten percent (10%) in any one week; and (ii) the total  
23 amount used to pay all Fixed Expenses in any one week shall not exceed the total amount set forth in

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the Budget for all Fixed Expenses for that week by more than five percent (5%); provided that Skagit Gardens may defer and pay a Fixed Expense budgeted for one week during any of the succeeding weeks, so long as the cumulative expenditures from the Petition Date through the week when such deferred payment is made do not exceed the cumulative budgeted amount (A) for such Fixed Expense line item by more than 10%, and (B) for all Fixed Expense line items by more than 5%. For purposes of this paragraph, "Variable Expenses" means the following specific line items in the Budget: "Freight/American Trans/Plants Express/UPS," "Yorkston Oil," and "Taxes", and "Fixed Expenses" means all line items in the Budget that are not Variable Expenses. For clarification purposes, with respect to the "Total Raw Materials" line item in the Budget, that is the actual line item that shall be subject to the variances set forth in the Section; the specified Suppliers listed above are provided as estimates and not intended to be specific, individual line items for purposes of this Order.

c. To the extent that any of the items set forth in the Budget became due prior to the Court's entry of this Interim Order (but subsequent to the Petition Date), Skagit Gardens is authorized to use Cash Collateral to pay such items after the entry of the Interim Order and such items shall be treated as having been paid during the week set forth in the Budget for purposes of determining whether Skagit Gardens is in compliance with the Budget.

4. Commitment Milestones. The Debtor commits to meeting the following milestones in connection with the administration of these cases and the orderly liquidation of substantially all the Debtors' assets (each a "Milestone"):

- a. By no later than July 22, 2016, obtain an order from the Bankruptcy Court approving the Proposed Sale, in form and substance reasonably acceptable to Sterling; and
- b. By no later than July 31, 2016, close the Proposed Sale.

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1           5.     Adequate Protection Lien and § 507(b) Rights. As adequate protection for the  
2 diminution of any interest that Secured Parties are determined to hold in the Prepetition Collateral as a  
3 result of Skagit Garden's use of Cash Collateral, Secured Parties are each hereby granted a  
4 replacement lien ("Postpetition Lien") in Skagit Gardens' postpetition assets of the same kind, type,  
5 and nature as the Prepetition Collateral in which such Secured Party held a lien ("Postpetition  
6 Collateral"). Any Postpetition Lien in Postpetition Collateral granted by this paragraph shall be in the  
7 same order, priority, validity and enforceability as any prepetition lien in Prepetition Collateral  
8 securing the claim of such Secured Party in the same type of assets and, under 11 U.S.C. § 510, shall  
9 be subject to the terms of any and all intercreditor subordination agreements executed by and among  
10 the Secured Parties in favor of Sterling. To the extent of any diminution in value of a Secured Party's  
11 interest in the Prepetition Collateral due to Cash Collateral use which is not otherwise protected by the  
12 Postpetition Lien granted herein, each Secured Party shall retain its rights under section 507(b) of the  
13 Bankruptcy Code ("507(b) Claim"). The Postpetition Lien and retention of rights under section § 507  
14 of the Bankruptcy Code constitute adequate protection of Secured Parties' interest in the Prepetition  
15 Collateral during the term of this Interim Order, but shall not prejudice the rights of any Secured Party  
16 to request additional adequate protection at any time.

17           6.     Evidence of Postpetition Liens. This Interim Order shall be sufficient and conclusive  
18 evidence of the priority, perfection, and validity of the Postpetition Liens.

19           7.     Additional Adequate Protection. As additional adequate protection to the Secured  
20 Parties, Skagit Gardens shall:

- 21                 a.     continue to maintain insurance on its assets as the same existed as of the  
22                         Petition Date;

23  
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b. provide to each Secured Party and the Unsecured Creditors Committee (if and when formed), on or before the 15<sup>th</sup> day of each month, a report reflecting actual revenues and expenses for the prior month, as compared to the Budget for that month; and

c. not later than Monday of each week, Skagit Gardens shall provide each Secured Party and the Unsecured Creditors Committee (if and when formed) with a report reflecting all sales for the prior week in a form substantially similar to sales reports provided to Sterling prepetition.

8. Professional Fund. The Professional Fund is approved with Skagit Garden to fund the amounts consistent with the Budget for that purpose. The Professional Fund shall be deposited and maintained in the trust account Bush Kornfeld LLP, attorneys for Skagit Gardens, where such funds shall be held in trust pending further order of the court following notice and hearing and for the *pro rata* benefit of the estate and Committee professionals. To the extent the amounts deposited into the Professional Fund exceed the allowed fees and costs of the respective estate and Committee professionals, such excess funds shall remain subject to the rights of the Secured Creditors.

9. Surcharges. The Court reserves all rights to determine whether any surcharge should be imposed on the Prepetition Collateral of any Secured Party pursuant to any future motion filed under section 506(c) of the Bankruptcy Code. No Secured Party consents to any such surcharge by its agreement to, or failure to object to the entry of this Interim Order, but each Secured Party reserves all of its defenses to any such motion.

10. Effective Date and Binding Effect. This Interim Order shall be effective as of the date and time of entry hereof and be binding upon Skagit Gardens, all parties in interest in this Case, and their respective successors and assigns, including any trustee or other fiduciary appointed in this Case

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1 or any subsequently converted bankruptcy case(s) of Debtor. This Interim Order shall also inure to  
2 the benefit of the Secured Parties, Skagit Gardens, and their respective successors and assigns. The  
3 provisions of this Interim Order, any § 507(b) Claim, any and all rights, remedies, privileges, interests,  
4 and benefits in favor of Secured Parties provided or acknowledged in this Interim Order, and any  
5 actions taken pursuant thereto, shall be effective immediately upon entry of this Interim Order  
6 pursuant to Bankruptcy Rules 4001 and 7062, shall continue in full force and effect, and shall survive  
7 entry of any other order, including without limitation any order which may be entered confirming any  
8 plan of reorganization, converting this Case to any other chapter under the Bankruptcy Code, or  
9 dismissing this Case. Any order dismissing the Case under section 1112 of the Bankruptcy Code or  
10 otherwise shall provide by virtue of this Interim Order (in accordance with sections 105 and 349 of the  
11 Bankruptcy Code) that (a) the rights of the professionals shall continue in full force and effect to the  
12 greatest extent permitted by applicable law, notwithstanding such dismissal, and (b) notwithstanding  
13 such dismissal, this Court shall retain jurisdiction over any § 507(b) Claim, the Professional Fund, and  
14 the rights, privileges, interests, and benefits provided or acknowledged in this Interim Order to the  
15 fullest extent permitted by applicable law.

16 11. Expedited Hearing on Default. In the event of any material breach or default by Skagit  
17 Gardens under the terms of this Interim Order, Sterling shall be entitled to a hearing on shortened  
18 notice, subject to the Court's calendar, regarding whether the automatic stay should be modified as a  
19 result of the failure of Skagit Gardens to provide the adequate protection required by this Interim  
20 Order.

21 12. Objections Overruled. All objections to the Motion (if any) with respect to entry of  
22 this Interim Order are hereby overruled.  
23

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13. Final Hearing. The final hearing on the Motion (the "Final Hearing") is hereby set for Friday, June 17, 2016, at 11:00 a.m. Objections shall be due on Monday, June 13, 2016, no later than 5:00 p.m., Pacific time,. Any reply shall be due on Wednesday, June 15, 2016, no later than 5:00 p.m., Pacific time,.

// /End of Order/ //

Presented by:

BUSH KORNFELD LLP

By /s/ Armand J. Kornfeld  
Armand J. Kornfeld, WSBA #17214  
Christine M. Tobin-Presser, WSBA #27628  
Attorneys for Debtors-in-Possession

Approved; Notice of Presentation Waived:

HILLIS CLARK MARTIN & PETERSON

By /s/ Josh Rataezyk  
Josh Rataezyk, WSBA #33046  
Bradley R. Duncan, WSBA #36436  
Attorneys for Sterling National Bank

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Skagit Gardens, Inc.		File BK 5/27		Sales Closes							
12 Week Cash Flows		Week Ending	21	22	23	24	25	26	27	28	Weeks 22-28 Total
		5/27/2016	6/3/2016	6/10/2016	6/17/2016	6/24/2016	7/1/2016	7/8/2016	7/15/2016		
Revenues											
Finished		876,000	740,000	618,000	477,359	364,311	282,772	156,433	165,390		2,804,265
Liners		68,000	49,000	37,000	30,415	27,482	25,651	16,880	33,759		220,186
Freight		90,000	90,000	65,000	65,000	65,000	65,000	20,000	20,000		390,000
Total Revenues		1,034,000	879,000	720,000	572,773	456,793	373,423	193,312	219,149		3,414,451
Disbursements											
Payroll & Related											
Payroll & Contract Labor		350,000		390,000		295,000		330,000			1,015,000
Health Insurance		48,000					48,000				48,000
401k			22,000		22,000		22,000			22,000	88,000
Interest & Bank Fees											
Bank fees			5,000				5,000				10,000
Sterling Interest & Fees			23,000				23,000				46,000
Suppliers											
Individual supplier payments are estimated for raw materials. Actual will depend on needs.											
Ball		8,750	8,750	8,750	8,750	8,750	8,750	5,775	5,425		54,950
Macore Company		15,000	15,000	15,000	15,000	15,000	15,000	9,900	9,300		94,200
McConkey		13,750	13,750	13,750	13,750	13,750	13,750	9,075	8,525		86,350
McHutchison		12,500	12,500	12,500	12,500	12,500	12,500	8,250	7,750		78,500
SHS Griffin		10,000	10,000	10,000	10,000	10,000	10,000	6,600	6,200		62,800
Skagit Farmers		8,750	8,750	8,750	8,750	8,750	8,750	5,775	5,425		54,950
Sumas GroMedia		11,250	11,250	11,250	11,250	11,250	11,250	7,425	6,975		70,650
Terra Nova		3,750	3,750	3,750	3,750	3,750	3,750	2,475	2,325		23,550
Other Material suppliers		41,250	41,250	41,250	41,250	41,250	41,250	27,225	25,575		259,050
Total Raw Materials		125,000	125,000	125,000	125,000	125,000	125,000	82,500	77,500		785,000
Other Supplies (non-inventoried + not on order)		25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000		175,000
Shipping Vendors											
Freight / American Trans / Plants Express / UPS		100,000	115,000	72,500	100,000	95,000	90,000	60,000	60,000		592,500
Penske Truck Lease								20,000	20,000		20,000
Yorkston Oil		25,000	25,000	15,000	25,000	20,000	20,000	10,000	10,000		125,000

EXHIBIT A

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	Skagit Gardens, Inc. 12 Week Cash Flows	Week Ending	21 5/27/2016	22 6/3/2016	23 6/10/2016	24 6/17/2016	25 6/24/2016	26 7/1/2016	27 7/8/2016	28 7/15/2016	Weeks 22-28 Total
10	Other Notable Vendors										
11	Cost Management (Natural Gas)										20,000
12	Utilities										20,000
13	Utility Deposits										20,000
14	Palmer (Rent)										(24,000)
15	Property Taxes							5,000			10,000
16	Insurance										-
17	UST Fees		2,500	2,500	2,500	2,500	2,500	13,000	2,500	13,000	26,000
18	Misc										17,500
19	Taxes*										33,000
	Contingency		34,000	19,000	32,000	14,975	29,625	18,925	26,500	12,450	153,475
	<b>Total Disbursements for Products and Services</b>		<b>709,500</b>	<b>390,500</b>	<b>662,000</b>	<b>314,475</b>	<b>622,125</b>	<b>397,425</b>	<b>556,500</b>	<b>261,450</b>	<b>3,204,475</b>
20	Reserves										
21	Professional Fund		35,000	35,000	35,000	30,000	30,000	30,000	30,000	30,000	220,000
22	503b9 claims			20,000	20,000	20,000	20,000	10,000	10,000	5,000	105,000
	Royalties			20,000	20,000	20,000	20,000	10,000	10,000	5,000	105,000
	<b>Total Disbursements</b>		<b>744,500</b>	<b>465,500</b>	<b>737,000</b>	<b>384,475</b>	<b>692,125</b>	<b>447,425</b>	<b>606,500</b>	<b>301,450</b>	<b>3,634,475</b>
	Cash Summary										
	Beginning Cash		845,123	400,623	735,123	952,123	1,590,648	1,977,523	2,625,098	3,120,021	
	Collections		300,000	800,000	954,000	1,003,000	1,059,000	1,085,000	1,091,423	359,466	
	Disbursements		(744,500)	(465,500)	(737,000)	(384,475)	(672,125)	(437,425)	(596,500)	(296,450)	
	<b>Ending Cash</b>		<b>400,623</b>	<b>735,123</b>	<b>952,123</b>	<b>1,590,648</b>	<b>1,977,523</b>	<b>2,625,098</b>	<b>3,120,021</b>	<b>3,183,037</b>	
	Pre-Petition AR		4,561,763	3,863,962	3,063,962	2,313,962	1,563,962	813,962	63,962	20,000	
	Post-Petition AR		-	879,000	1,445,000	1,764,773	1,912,567	1,950,990	1,802,879	1,706,524	
	<b>Total AR</b>		<b>4,561,763</b>	<b>4,742,962</b>	<b>4,508,962</b>	<b>4,078,735</b>	<b>3,476,529</b>	<b>2,764,952</b>	<b>1,866,841</b>	<b>1,726,524</b>	
	<b>Net Inventory</b>		<b>4,311,162</b>	<b>4,298,422</b>	<b>4,343,122</b>	<b>4,284,992</b>	<b>4,303,408</b>	<b>4,376,849</b>	<b>4,477,231</b>	<b>4,555,560</b>	
	<b>Working Capital (Cash + AR + Inv)</b>		<b>9,273,548</b>	<b>9,776,507</b>	<b>9,804,207</b>	<b>9,954,375</b>	<b>9,757,460</b>	<b>9,766,898</b>	<b>9,464,093</b>	<b>9,465,121</b>	

\* Skagit Gardens pays B&O, L&I and various city taxes. These amounts accrue during the bankruptcy period, but are not payable until after the estimated sale date.

Disclaimer: This presentation estimates performance of the Company based on historical data, estimates, and assumptions. It cannot be relied upon to reflect actual future results.